

REMARKS

In response to the outstanding Office Action, Paper No./Mail Date 20050309, dated March 15, 2005, applicant has carefully studied the references cited by the Examiner and the Examiner's comments relative thereto.

Claims 1-2, 4, and 6-7 remain in the application for consideration by the Examiner.

No new matter has been added.

Reconsideration of the application is respectfully requested.

If the Examiner does not feel this reply places the application in condition for allowance, applicant respectfully requests entry of this reply for purposes of appeal.

The Examiner objected to the amendment filed January 18, 2005 under 35 U.S.C. § 132 as introducing new matter. The Examiner stated:

"The added material which is not supported by the original disclosure is as follows: That the reinforcement flange is rounded or orbicular or protuberant, for example. Moreover, the specification does not support the recitation that the fold has a substantially rounded outer surface as previously recited in claim 3, now canceled.

Applicant is required to cancel the new matter in the reply to this Office Action." (emphasis in original)

In the originally filed parent patent application filed on March 12, 2002, from which priority is claimed, the flange of the tube illustrated in the drawings included a rounded outer surface. The rounded outer surface, generally depicted by the reference numeral 26, is clearly illustrated in Figs. 1, 2, and 3 which are inserted below.

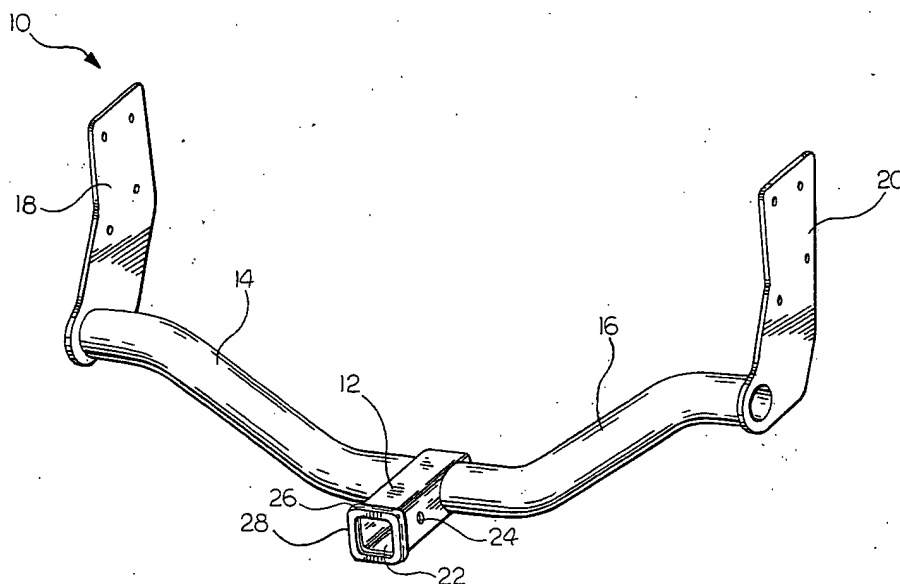


FIG. 1

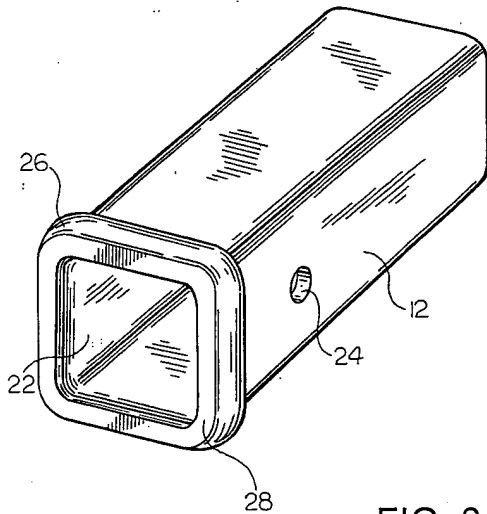


FIG. 2

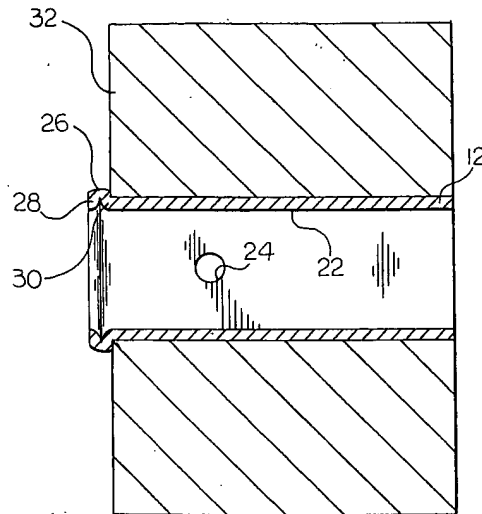


FIG. 3

It is indisputable, especially as shown in Fig. 3, that the outer surface shown is rounded, orbicular, or protuberant. Had a linear or straight surface been intended on the drawing, it would have been drawn as such. A different drawing instrument is required to draw a linear element and a rounded element. Thus, the draftsman must have intended the surface to be shown as rounded, orbicular, or protuberant. The contour lines or shading lines shown in Figs. 1 and 2 also evidences this intent.

Section 2163.06 of the MPEP states:

"... information contained in any one of the specification, claims, or drawings of the application as filed, may be added to any other part of the application without introducing new matter."

Since the rounded outer surface is clearly shown in the drawings, the amendment of the specification to include reference to the rounded shape and a recitation thereof in the claims is proper and does not introduce new matter. Thus, the rounded outer surface of the flange was fully supported by the original disclosure.

Additionally, the specification discloses that the tube material folds outwardly to a developed limit. Due to the nature of the tube stock material, and absent outside influences, the folding of the material results in the rounded, orbicular, or protuberant outer surface. In other words, the outer surface is caused to "bulge" outwardly when the material folds upon itself.

It is submitted that the objection of the Examiner under 35 U.S.C. § 132 is improper. Therefore, withdrawal of the objection is respectfully requested.

The Examiner rejected Claims 1, 2, 4, 6, and 7 under 35 U.S.C. §112, first paragraph.

The Examiner stated:

“The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The originally filed specification does not support the recitation that the fold has a substantially rounded outer surface.”

The specification was amended in the Amendment filed January 14, 2005 to include the description “The folded thicknesses 28, 30 result in an outer peripheral surface of the reinforcement flange 26 which is rounded as most clearly shown in Figs. 2 and 3. Rounded as used herein means orbicular or protuberant, for example.” As discussed above, the inclusion of this description is proper and cannot be considered new matter since the rounded outer surface of the flange is clearly shown in Figs 1-3 as originally filed. Figs. 1 and 2 include contour lines which illustrate the curvature. Additionally, in the sectional view shown in Fig. 3, it is evident that the outer surface of the fold created by the thicknesses 28 and 30 is rounded.

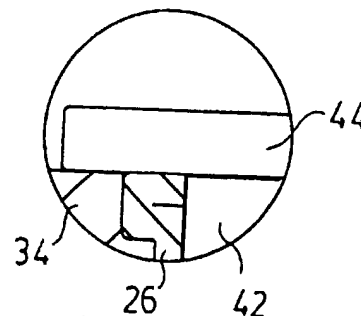
It is submitted that the Examiner’s rejection based on 35 U.S.C. §112, first paragraph is improper. Thus, the Examiner’s favorable reconsideration of the rejection of Claims 1, 2, 4, 6, and 7 based upon 35 U.S.C. §112, first paragraph, is respectfully requested.

The Examiner rejected Claims 1, 2, 4, 6, and 7 under 35 USC §102(e) as being anticipated by Roe. The Examiner stated:

“Roe discloses a receiver tube having the structure as claimed. The fold of Roe is considered to have a rounded or orbicular or protuberant outer surface to the same degree as claimed by applicant. The patentability of a product does not depend on its method of production. It is noted that applicant has already received a patent for the process of making the device (i.e. U.S. Patent 6,796,574). (emphasis in original)

Applicant acknowledges that a patent has been issued to applicant for the process of making the receiver tube. However, applicant submits that the structure as claimed is not anticipated by the cited reference, and is patentable. Fig. 4d from the ‘672 patent to Roe showing the final shape of the receiver tube flange is inserted below.

FIG. 4d.



Roe does not disclose a fold having a rounded, orbicular, or protuberant outer surface. The outer surface of the fold in Roe is distinctly linear or straight and not rounded, orbicular, or protuberant. There is no degree of curvature to the surface. It is simply linear or straight. The tube material is forced into a recess having a rectangular shape, thereby causing the final shape of the flange to be rectangular. Thus, the surface cannot be rounded, orbicular, or protuberant to the same degree as claimed by applicant.

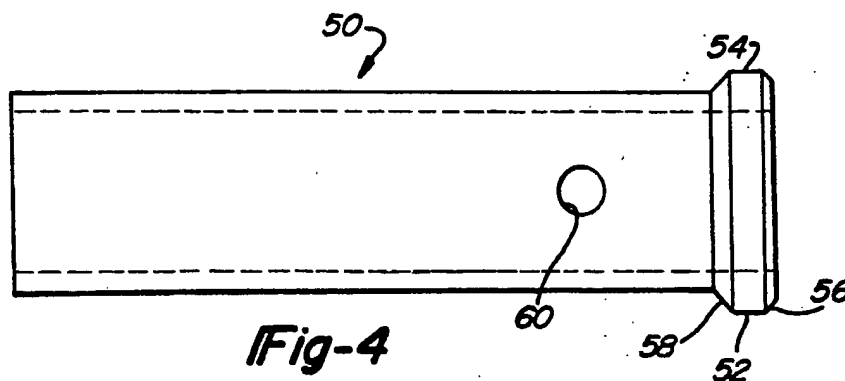
Due to the structural differences noted, it is submitted that independent Claims 1, 4, and 6 are not anticipated under 35 USC §102(e) by Roe and should, therefore, be patentable.

Since Claims 1 and 6 are deemed patentable, Claims 2 and 7 which depend respectively therefrom are patentable.

The Examiner's favorable reconsideration of the rejection based upon 35 USC §102(e) is respectfully requested.

The Examiner rejected Claims 1, 2, 4, 6, and 7 under 35 USC §102(b) as being anticipated by Marquardt, for the same reasons listed for Roe.

Applicant acknowledges that a patent has been issued to applicant for the process of making the receiver tube. However, applicant submits that the structure as claimed is not anticipated by the cited reference, and is patentable. Fig. 4 from the '194 patent to Marquardt showing the final shape of the receiver tube flange is inserted below.



Marquardt does not disclose a fold having a rounded, orbicular, or protuberant outer surface. The outer surface of the fold in Marquardt includes a main portion which is distinctly linear or straight and not rounded, orbicular, or protuberant. There is no degree of curvature to the surface. Straight or linear inclined portions flank opposing sides of the main linear or straight portion. Similar to Roe, the shape of the outer surface of the flange is determined by a recess into which the tube material is forced. The recess includes linear or straight edges.

Thus, the surface of the flange formed therefrom cannot be rounded, orbicular, or protuberant to the same degree as claimed by applicant.

Due to the structural differences noted, it is submitted that Claims 1, 4, and 6 are not anticipated under 35 USC §102(b) by Marquardt and are deemed to be patentable.

Since Claims 1 and 6 are deemed patentable, Claims 2 and 7 which depend respectively therefrom are patentable.

The Examiner's favorable reconsideration of the rejection based upon 35 USC §102(b) is respectfully requested.

If other claim language is deemed appropriate by the Examiner to further define and differentiate applicant's invention from the references cited, a telephone interview is respectfully requested in order to advance the application to allowance.

The other references cited by the Examiner, but not applied, have been studied and are not considered to be any more pertinent than the references relied upon by the Examiner.

It is submitted that the claims distinctly define the applicant's invention and distinguish the same from the prior art. Reconsideration of the application is respectfully requested. Accordingly, a formal Notice of Allowance is solicited.